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ATTORNEY DOCKET NO.: 041464-5018-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

*In re* Application of:

Tomohiro KAWATA *et al.*

Application No.: 08/931,615

Filed: September 16, 1997

CPA Filed: May 24, 1999

For: SPEAKER UNIT

Group Art Unit: 2743

Examiner: Huyen Le

### Box AF - Expedited Procedure

Commissioner for Patents  
Washington, D.C. 20231

Sir:

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OFFICE OF PETITIONS

**PETITION UNDER 37 C.F.R § 1.183 REQUESTING ENTRY OF APPELLANTS'  
REPLY BRIEF IN THE INTEREST OF FAIRNESS AND JUSTICE**

Pursuant to 37 C.F.R. § 1.183, in the interest of fairness and justice, Appellants hereby respectfully petition the Commissioner to enter Appellants' Reply Brief, submitted herewith, in response to the Examiner's Answer in the appeal pending before the Board of Patent Appeals and Interferences in the above-referenced case.

The circumstances necessitating this Petition are as follows. Appellants' Appeal Brief was filed September 6, 2001, appealing the final rejections of claims 2-9, 14-16, and 20-29 in the above-identified application. An Examiner's Answer was mailed November 27, 2001.

However, due to delays in the U.S. Postal System resulting from anthrax-related irradiation, the Examiner's Answer was not received by Appellants' Representatives until January 15, 2002.

Whereupon, on January 18, 2002, Appellants petitioned the Commissioner under 37 C.F.R. § 1.181 to reset the period for reply to the Examiner's Answer due to the mail delay. The Petition

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was granted on April 26, 2002, however, the two-month period to reply to the Examiner's Answer was reset to run from the actual receipt date of the Examiner's Answer, January 15, 2002, not the date of the decision on the Petition. Thus, the new period for reply granted by the Commissioner expired before the decision on the Petition was rendered on April 26, 2002.

Meanwhile, on June 4, 2002, in accordance with an earlier March 27, 2002 Order from the Administrator of the Board of Patent Appeals and Interferences remanding the case to the Examiner for, among other reasons, clarification of the status of the claims pending on appeal, Appellants' filed a Request for Remand to the Examiner on June 4, 2002 requesting a revised Examiner's Answer clarifying the status of the claims pending on appeal. On October 3, 2002, Appellants' representatives contacted the Administrator of the Board of Patent Appeals to inquire as to the status of the case, still anticipating a revised Examiner's Answer. The Administrator informed Appellants' representatives that the file was with the Examiner.

On October 22, 2002, rather than issuing a revised Examiner's Answer, the Examiner issued a communication clarifying for the record the claims on appeal. Appellants' representatives subsequently contacted the Administrator of the Board of Patent Appeals on November 5, 2002, the Administrator indicated that, according to PALM, the file was with a paralegal at the Board, but was unavailable to the Administrator due to an ongoing PTO file audit. At the Administrator's suggestion, Appellants' representatives called the Administrator's office on December 9, 2002 and again on January 9, 2003, but were unable to get through. On January 26, 2003, Appellants' representatives contacted the Administrator who advised that the best course of action, given the Examiner's action, to obtain entry of Appellants' Reply to the Examiner's Answer would be to submit Appellants' Reply Brief together with this Petition.

Accordingly, submitted herewith is Appellants' Reply Brief under 37 C.F.R. § 1.193(B)(1). For the aforementioned reasons, Appellants respectfully request that this Reply Brief be entered in the interest of fairness and justice.

Please charge the requisite \$130.00 petition fee due under 37 C.F.R. § 1.17(h) to our Deposit Account No. 50-0310. The Commissioner is hereby authorized to charge any additional fees which may be necessary, or credit any overpayment, to our Deposit Account No. 50-0310.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

Dated: January 31, 2003

By: 

Robert J. Hollingshead  
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